

Access all Areas

Equal treatment for disabled people



Overview

Part III of the Disability Discrimination Act 1995 (the Act) imposes legal obligations on those who provide goods, facilities and services to the public. The provisions seek to ensure that disabled people are not treated less favourably than other customers.

For more information on disability discrimination in the workplace, see our factsheet 'Disability Discrimination', part of the Employment Law series.

Discrimination against disabled customers

There are two forms of discrimination that are made unlawful. One form of discrimination occurs when a service provider treats a person less favourably for a reason relating to the disabled person's disability and they cannot show that the treatment can be justified. The other form of discrimination occurs when a service provider fails to comply with a duty to make reasonable adjustments and cannot show that the failure is justified. These concepts are considered in more detail below.

Who is protected?

If you (a child or an adult) are disabled then you should be covered by the Act. A disabled person is someone who has a physical or a mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

The term 'disabled' is widely defined and it includes physical disabilities, hidden impairments such as learning disabilities, depression and mental illness. It also includes epilepsy, MS, cancer and so on. The government estimates that 8.5 million people are covered by the DDA and fewer than 5% of them are wheelchair users.

What are goods, facilities and services?

The Act provides no definition of 'goods, facilities and services'. However, it provides a non-exhaustive list of examples of what are likely to be considered as services:

- Access to and use of any place which members of the public are permitted to enter
- Access to and use of means of communication
- Access to and use of information services
- Accommodation in a hotel, boarding house or other similar establishment
- Facilities by way of banking or insurance or for grants, loans, credit or finance
- Facilities for entertainment, recreation or refreshment
- Facilities provided by employment agencies
- Services of any profession or trade, or any local or public authority.

It is irrelevant whether the service is provided for free or for payment. Further, no distinction is made as to whether the service provider is a private, public or voluntary body. Therefore a whole range of establishments are covered such as restaurants, pubs, supermarkets, hotels, banks and shops etc. Private members clubs are covered if they have 25 or more members, admission to membership is regulated by their constitutions and they are not trade organisations.

Duty to make reasonable adjustments

This is likely to be the main route for bringing a claim following a decision of the House of Lords which narrowed considerably the protection available through the less favourable treatment route (see below).

Service providers have an important legal duty to take steps that are reasonable to help disabled customers access services. The duty is owed to disabled people at large. Service providers therefore need to anticipate, plan and continually review the reasonable adjustments they need to make. The duty to make reasonable adjustments can include:

- Changing practices, policies and procedures
- Providing auxiliary aids and services
- Taking reasonable steps in relation to a physical feature by removing or altering it; or providing a means of avoiding it; or providing the service by a reasonable alternative method.

So for example, if customers in a clothes shop need to fill out a form to order items out of stock, this policy would discriminate against disabled customers that cannot write. Consideration would need to be given about installing speech recognition software or having a member of staff fill out the form for the disabled customer.

What is 'reasonable' is not defined in the Act. Much will depend on the type of service being provided, the nature of the service provider, and its size and resources. Factors that may be taken into account by a service provider when considering what is reasonable are:

- Whether taking the step is effective in helping the disabled person to overcome the difficulty in accessing the service
- The extent to which it is practical to take the step
- The financial and other costs of making the adjustment
- The amount of resources already spent on making adjustments.

Therefore it is more likely to be reasonable for a service provider such as a bank with substantial financial resources to make adjustments that are costly, than for a small shopkeeper.

Less favourable treatment

If a provider of services treats you less favourably than they treat other customers for a reason which relates to your disability, then they have discriminated against you.

You need to compare your treatment to a non-disabled person whose circumstances are otherwise the same as yours. Unfortunately the House of Lords has narrowed the scope of this type of protection considerably in one of its decisions in respect of a claim by a disabled person. For example, if you are a blind person with a guide dog, and a restaurant refuses to admit you because of your dog, you would not have a claim unless a sighted person with a dog would have been admitted to the restaurant. The reason for the treatment would be the dog and not the blindness. So, unless your particular disability has clearly been a factor in the service provider's decision, such a claim is likely to be difficult to establish.

Less favourable treatment will amount to discrimination unless the service provider can show the treatment to be justified.

Discrimination can only be justified if, in the opinion of the service provider, one of the five specified statutory conditions is satisfied and it is reasonable, in all the circumstances of the case, for the service provider to hold that opinion.

The Act sets out limited instances where discrimination may be justifiable:

- The discrimination is necessary so as not to endanger the health and safety of any person (this may include the disabled person)
- The disabled person is unable to enter into an enforceable agreement
- Where the treatment is necessary because otherwise the provider of services would be unable to provide the service to members of the public
- Where the treatment is necessary in order to provide the service to the disabled person or members of the public
- Where the difference in the terms reflects the greater cost to the provider of services in providing that service to the disabled person

How do I bring a claim and what will it achieve?

Breach of the Regulations (technically known as 'breach of statutory duty') constitutes a tort (or civil wrong) – this means that claims must be brought in the County Court. The time limit for bringing a claim is six months less one day from the date of the discrimination (or last in a series of acts of discrimination).

The court has the discretion to allow a claim that is out of time, but you should not rely on this discretion.

The court can award both financial and non-financial remedies – respectively monetary compensation or an injunction that 'rights the wrong'. Typical awards can range from £500 to £5,000.

The Regulations make it possible to ask questions by means of a statutory questionnaire, to find out more information to support a claim of discrimination. The questionnaire can be served before starting a claim, so long as it is within six months of the date of the discrimination, in the correct form and served using one of the permitted methods. It might be particularly useful to serve a questionnaire if you are not sure whether to bring proceedings, and feel you need more information to decide.

If the organisation you are claiming against does not respond to your questionnaire within eight weeks, or if their response is inadequate, a court can draw 'adverse inferences', i.e. unfavourable views from this. It is possible for a court to conclude that discrimination did occur in these circumstances, so there is a real incentive on the organisation to provide a full and honest response to the questionnaire.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:



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